

Calendar No. 642

106TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 106-324

ELECTRIC RELIABILITY 2000 ACT

JUNE 28, 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2071]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2071) to benefit electricity consumers by promoting the reliability of the bulk-power system, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act maybe cited as the “Electric Reliability 2000 Act”.

SEC. 2. ELECTRIC RELIABILITY ORGANIZATION.

(a) IN GENERAL.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

“SEC. 215. ELECTRIC RELIABILITY ORGANIZATION.

“(a) DEFINITIONS.—In this section:

“(1) AFFILIATED REGIONAL RELIABILITY ENTITY.—The term ‘affiliated regional reliability entity’ means an entity delegated authority under subsection (h).

“(2) BULK-POWER SYSTEM.—

“(A) IN GENERAL.—The term ‘bulk-power system’ means all facilities and control systems necessary for operating an interconnected electric power transmission grid or any portion of an interconnected transmission grid.

“(B) INCLUSIONS.—The term ‘bulk-power system’ includes—

“(i) high voltage transmission lines, substations, control centers, communications, data, and operations planning facilities necessary for the operation of all or any part of the interconnected transmission grid; and

“(ii) the output of generating units necessary to maintain the reliability of the transmission grid.

“(3) BULK-POWER SYSTEM USER.—The term ‘bulk-power system user’ means an entity that—

“(A) sells, purchases, or transmits electric energy over a bulk-power system; or

“(B) owns, operates, or maintains facilities or control systems that are part of a bulk-power system; or

“(C) is a system operator.

“(4) ELECTRIC RELIABILITY ORGANIZATION.—The term electric reliability organization means the organization designated by the Commission under subsection (d).

“(5) ENTITY RULE.—The term ‘entity rule’ means a rule adopted by an affiliated regional reliability entity for a specific region and designed to implement or enforce 1 or more organization standards.

“(6) INDEPENDENT DIRECTOR.—The term ‘independent director’ means a person that—

“(A) is not an officer or employee of an entity that would reasonably be perceived as having a direct financial interest in the outcome of a decision by the board of directors of the electric reliability organization; and

“(B) does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director of the electric reliability organization.

“(7) INDUSTRY SECTOR.—The term ‘industry sector’ means a group of bulk-power system users with substantially similar commercial interests, as determined by the board of directors of the electric reliability organization.

“(8) INTERCONNECTION.—The term ‘interconnection’ means a geographic area in which the operation of bulk-power system components is synchronized so that the failure of 1 or more of the components may adversely affect the ability of the operators of other components within the interconnection to maintain safe and reliable operation of the facilities within their control.

“(9) ORGANIZATION STANDARD.—

“(A) IN GENERAL.—The term ‘organization standard’ means a policy or standard adopted by the electric reliability organization to provide for the reliable operation of a bulk-power system.

“(B) INCLUSIONS.—The term ‘organization standard’ includes—

“(i) an entity rule approved by the electric reliability organization; and

“(ii) a variance approved by the electric reliability organization.

“(10) PUBLIC INTEREST GROUP.—

“(A) IN GENERAL.—The term ‘public interest group’ means a nonprofit private or public organization that has an interest in the activities of the electric reliability organization.

“(B) INCLUSIONS.—The term ‘public interest group’ includes—

“(i) a ratepayer advocate;

“(ii) an environmental group; and

“(iii) a State or local government organization that regulates participants in, and promulgates government policy with respect to, the market for electric energy.

“(11) SYSTEM OPERATOR.—

“(A) IN GENERAL.—The term ‘system operator’ means an entity that operates or is responsible for the operation of a bulk-power system.

“(B) INCLUSIONS.—The term ‘system operator’ includes—

“(i) a control area operator;

“(ii) an independent system operator;

“(iii) a transmission company;

“(iv) a transmission system operator; and

“(v) a regional security coordinator.

“(12) VARIANCE.—The term ‘variance’ means an exception from the requirements of an organization standard (including a proposal for an organization standard in a case in which there is no organization standard) that is adopted by an affiliated regional reliability entity and is applicable to all or a part of the region for which the affiliated regional reliability entity is responsible.

“(b) COMMISSION AUTHORITY.—

“(1) JURISDICTION.—Notwithstanding section 201(f), within the United States, the Commission shall have jurisdiction over the electric reliability organization, all affiliated regional reliability entities, all system operators, and all bulk-power system users, including entities described in section 201(f), for purposes of approving organization standards and enforcing compliance with this section.

“(2) DEFINITION OF TERMS.—The Commission may by regulation define any term used in this section consistent with the definitions in subsection (a) and the purpose and intent of this Act.

“(c) EXISTING RELIABILITY STANDARDS.—

“(1) SUBMISSION TO THE COMMISSION.—Before designation of an electric reliability organization under subsection (d), any person, including the North

American Electric Reliability Council and its member Regional Reliability Councils, may submit to the Commission any reliability standard, guidance, practice, or amendment to a reliability standard, guidance, or practice that the person proposes to be made mandatory and enforceable.

“(2) REVIEW BY THE COMMISSION.—The Commission, after allowing interested persons an opportunity to submit comments, may approve a proposed mandatory standard, guidance, practice, or amendment submitted under paragraph (1) if the Commission finds that the standard, guidance, or practice is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

“(3) EFFECT OF APPROVAL.—A standard, guidance, or practice shall be mandatory and applicable according to its terms following approval by the Commission and shall remain in effect until it is—

“(A) withdrawn, disapproved, or superseded by an organization standard that is issued or approved by the electric reliability organization and made effective by the Commission under section (e); or

“(B) disapproved by the Commission if, on complaint or upon motion by the Commission and after notice and an opportunity for comment, the Commission finds the standard, guidance, or practice to be unjust, unreasonable, unduly discriminatory or preferential, or not in the public interest.

“(4) ENFORCEABILITY.—A standard, guidance, or practice in effect under this subsection shall be enforceable by the Commission.

“(d) DESIGNATION OF ELECTRIC RELIABILITY ORGANIZATION.—

“(1) REGULATIONS.—

“(A) PROPOSED REGULATIONS.—Not later than 90 days after the date of enactment of this section, the Commission shall propose regulations specifying procedures and requirements for an entity to apply for designation as the electric reliability organization.

“(B) NOTICE AND COMMENT.—The Commission shall provide notice and opportunity for comment on the proposed regulations.

“(C) FINAL REGULATION.—Not later than 180 days after the date of enactment of this section, the Commission shall promulgate final regulations under this subsection.

“(2) APPLICATION.—

“(A) SUBMISSION.—Following the promulgation of final regulations under paragraph (1), an entity may submit an application to the Commission for designation as the electric reliability organization.

“(B) CONTENTS.—The applicant shall describe in the application—

“(i) the governance and procedures of the applicant; and

“(ii) the funding mechanism and initial funding requirements of the applicant.

“(3) NOTICE AND COMMENT.—The Commission shall—

“(A) provide public notice of the application; and

“(B) afford interested parties an opportunity to comment.

“(4) DESIGNATION OF ELECTRIC RELIABILITY ORGANIZATION.—The Commission shall designate the applicant as the electric reliability organization if the Commission determines that the applicant—

“(A) has the ability to develop, implement, and enforce standards that provide for an adequate level of reliability of bulk-power systems;

“(B) permits voluntary membership to any bulk-power system user or public interest group;

“(C) ensures fair representation of its members in the selection of its directors and fair management of its affairs, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of organization standards and the exercise of oversight of bulk-power system reliability;

“(D) ensures that no 2 industry sectors have the ability to control, and no 1 industry sector has the ability to veto, the applicant’s discharge of its responsibilities as the electric reliability organization (including actions by committees recommending standards for approval by the board or other board actions to implement and enforce standards);

“(E) provides for governance by a board wholly comprised of independent directors;

“(F) provides a funding mechanism and requirements that—

“(i) are just, reasonable, not unduly discriminatory or preferential and in the public interest; and

“(ii) satisfy the requirements of subsection (1);

“(G) has established procedures for development of organization standards that—

“(i) provide reasonable notice and opportunity for public comment, taking into account the need for efficiency and effectiveness in decision-making and operations and the requirements for technical competency in the development of organization standards;

“(ii) ensure openness, a balancing of interests, and due process; and
“(iii) includes alternative procedures to be followed in emergencies;

“(H) has established fair and impartial procedures for implementation and enforcement of organization standards, either directly or through delegation to an affiliated regional reliability entity, including the imposition of penalties, limitations on activities, functions, or operations, or other appropriate sanctions;

“(I) has established procedures for notice and opportunity for public observation of all meetings, except that the procedures for public observation may include alternative procedures for emergencies or for the discussion of information that the directors reasonably determine should take place in closed session, such as litigation, personnel actions, or commercially sensitive information;

“(J) provides for the consideration of recommendations of States and State commissions; and

“(K) addresses other matters that the Commission considers appropriate to ensure that the procedures, governance, and funding of the electric reliability organization are just, reasonable, not unduly discriminatory or preferential, and in the public interest.

“(5) EXCLUSIVE DESIGNATION.—

“(A) IN GENERAL.—The Commission shall designate only 1 electric reliability organization.

“(B) MULTIPLE APPLICATIONS.—If the Commission receives 2 or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application that the Commission determines will best implement this section.

“(e) ORGANIZATION STANDARDS.—

“(1) SUBMISSION OF PROPOSALS TO COMMISSION.—

“(A) IN GENERAL.—The electric reliability organization shall submit to the Commission proposals for any new or modified organization standards.

“(B) CONTENTS.—A proposal submitted under subparagraph (A) shall include—

“(i) a concise statement of the purpose of the proposal; and

“(ii) a record of any proceedings conducted with respect to the proposal.

“(2) REVIEW BY THE COMMISSION.—

“(A) NOTICE AND COMMENT.—The Commission shall—

“(i) provide notice of a proposal under paragraph (1); and

“(ii) allow interested persons 30 days to submit comments on the proposal.

“(B) ACTION BY THE COMMISSION.—

“(i) IN GENERAL.—After taking into consideration any submitted comments, the Commission shall approve or disapprove a proposed organization standard not later than the end of the 60-day period beginning on the date of the deadline for the submission of comments, except that the Commission may extend the 60-day period for an additional 90 days for good cause.

“(ii) FAILURE TO ACT.—If the Commission does not approve or disapprove a proposal within the period specified in clause (i), the proposed organization standard shall go into effect subject to its terms, without prejudice to the authority of the Commission to modify the organization standard in accordance with the standards and requirements of this section.

“(C) EFFECTIVE DATE.—An organization standard approved by the Commission shall take effect not earlier than 30 days after the date of the Commission’s order of approval.

“(D) STANDARDS FOR APPROVAL.—

“(i) IN GENERAL.—The Commission shall approve a proposed new or modified organization standard if the Commission determines the organization standard to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

“(ii) CONSIDERATIONS.—In the exercise of its review responsibilities under this subsection, the Commission—

“(I) shall give due weight to the technical expertise of the electric reliability organization with respect to the content of a new or modified organization standard; but

“(II) shall not defer to the electric reliability organization with respect to the effect of the organization standard on competition.

“(E) REMAND.—A proposed organization standard that is disapproved in whole or in part by the Commission shall be remanded to the electric reliability organization for further consideration.

“(3) ORDERS TO DEVELOP OR MODIFY ORGANIZATION STANDARDS.—The Commission, on complaint or on motion of the Commission, may order the electric reliability organization to develop and submit to the Commission, by a date specified in the order, an organization standard or modification to an existing organization standard to address a specific matter if the Commission considers a new or modified organization standard appropriate to carry out this section, and the electric reliability organization shall develop and submit the organization standard or modification to the Commission in accordance with this subsection.

“(4) VARIANCES AND ENTITY RULES.—

“(A) PROPOSAL.—An affiliated regional reliability entity may propose a variance or entity rule to the electric reliability organization.

“(B) EXPEDITED CONSIDERATION.—If expedited consideration is necessary to provide for bulk-power system reliability, the affiliated regional reliability entity may—

“(i) request that the electric reliability organization expedite consideration of the proposal; and

“(ii) file a notice of the request with the Commission.

“(C) FAILURE TO ACT.—

“(i) IN GENERAL.—If the electric reliability organization fails to adopt the variance or entity rule, in whole or in part, the affiliated regional reliability entity may request that the Commission review the proposal.

“(ii) ACTION BY THE COMMISSION.—If the Commission determines, after a review of the request, that the action of the electric reliability organization did not conform to the applicable standards and procedures approved by the Commission, or if the Commission determines that the variance or entity rule is just, reasonable, not unduly discriminatory or preferential, and in the public interest and that the electric reliability organization has unreasonably rejected or failed to act on the proposal, the Commission may—

“(I) remand the proposal for further consideration by the electric reliability organization; or

“(II) order the electric reliability organization or the affiliated regional reliability entity to develop a variance or entity rule consistent with that requested by the affiliated regional reliability entity.

“(D) PROCEDURE.—A variance or entity rule proposed by an affiliated regional reliability entity shall be submitted to the electric reliability organization for review and submission to the Commission in accordance with the procedures specified in paragraph (2).

“(5) IMMEDIATE EFFECTIVENESS.—

“(A) IN GENERAL.—Notwithstanding any other provision of this subsection, a new or modified organization standard shall take effect immediately on submission to the Commission without notice or comment if the electric reliability organization—

“(i) determines that an emergency exists requiring that the new or modified organization standard take effect immediately without notice or comment;

“(ii) notifies the Commission as soon as practicable after making determination;

“(iii) submits the new or modified organization standard to the Commission not later than 5 days after making the determination; and

“(iv) includes in the submission an explanation of the need for immediate effectiveness.

“(B) NOTICE AND COMMENT.—The Commission shall—

“(i) provide notice of the new or modified organization standard or amendment for comment; and

“(ii) follow the procedures set out in paragraphs (2) and (3) for review of the new or modified organization standard.

“(6) COMPLIANCE.—Each bulk power system user shall comply with an organization standard that takes effect under this section.

“(f) COORDINATION WITH CANADA AND MEXICO.—

“(1) RECOGNITION.—The electric reliability organization shall take all appropriate steps to gain recognition in Canada and Mexico.

“(2) INTERNATIONAL AGREEMENTS.—

“(A) IN GENERAL.—The President shall use best efforts to enter into international agreements with the appropriate governments of Canada and Mexico to provide for—

“(i) effective compliance with organization standards; and

“(ii) the effectiveness of the electric reliability organization in carrying out its mission and responsibilities.

“(B) COMPLIANCE.—All actions taken by the electric reliability organization, an affiliated regional reliability entity, and the Commission shall be consistent with any international agreement under subparagraph (A).

“(g) CHANGES IN PROCEDURE, GOVERNANCE, OR FUNDING.—

“(1) SUBMISSION TO THE COMMISSION.—The electric reliability organization shall submit to the Commission—

“(A) any proposed change in a procedure, governance, or funding provision; or

“(B) any change in an affiliated regional reliability entity’s procedure, governance, or funding provision relating to delegated functions.

“(2) CONTENTS.—A submission under paragraph (1) shall include an explanation of the basis and purpose for the change.

“(3) EFFECTIVENESS.—

“(A) CHANGES IN PROCEDURE.—

“(i) CHANGES CONSTITUTING A STATEMENT OF POLICY, PRACTICE, OR INTERPRETATION.—A proposed change in procedure shall take effect 90 days after submission to the Commission if the change constitutes a statement of policy, practice, or interpretation with respect to the meaning or enforcement of the procedure.

“(ii) OTHER CHANGES.—A proposed change in procedure other than a change described in clause (i) shall take effect on a finding by the Commission, after notice and opportunity for comment, that the change—

“(I) is just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

“(II) satisfies the requirements of subsection (d)(4).

“(B) CHANGES IN GOVERNANCE OR FUNDING.—A proposed change in governance or funding shall not take effect unless the Commission finds that the change—

“(i) is just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

“(ii) satisfies the requirements of subsection (d)(4).

“(4) ORDER TO AMEND.—

“(A) IN GENERAL.—The Commission, on complaint or on the motion of the Commission, may require the electric reliability organization to amend a procedural, governance, or funding provision if the Commission determines that the amendment is necessary to meet the requirements of this section.

“(B) FILING.—The electric reliability organization shall submit the amendment in accordance with paragraph (1).

“(h) DELEGATIONS OF AUTHORITY.—

“(1) IN GENERAL.—

“(A) IMPLEMENTATION AND ENFORCEMENT OF COMPLIANCE.—At the request of an entity, the electric reliability organization shall enter into an agreement with the entity for the delegation of authority to implement and enforce compliance with organization standards in a specified geographic area if the electric reliability organization finds that—

“(i) the entity satisfies the requirements of subparagraphs (A), (B), (C), (D), (F), (J), and (K) of subsection (d)(4); and

“(ii) the delegation would promote the effective and efficient implementation and administration of bulk-power system reliability.

“(B) OTHER AUTHORITY.—The electric reliability organization may enter into an agreement to delegate to an entity any other authority, except that the electric reliability organization shall reserve the right to set and approve standards for bulk-power system reliability.

“(2) APPROVAL BY THE COMMISSION.—

“(A) SUBMISSION TO THE COMMISSION.—The electric reliability organization shall submit to the Commission—

“(i) any agreement entered into under this subsection; and

“(ii) any information the Commission requires with respect to the affiliated regional reliability entity to which authority is delegated.

“(B) STANDARDS FOR APPROVAL.—The Commission shall approve the agreement, following public notice and an opportunity for comment, if the Commission finds that the agreement—

“(i) meets the requirements of paragraph (1); and

“(ii) is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

“(C) REBUTTABLE PRESUMPTION.—A proposed delegation agreement with an affiliated regional entity organized on an interconnection-wide basis shall be rebuttably presumed by the Commission to promote the effective and efficient implementation and administration of the reliability of the bulk-power system.

“(D) INVALIDITY ABSENT APPROVAL.—No delegation by the electric reliability organization shall be valid unless the delegation is approved by the Commission.

“(3) PROCEDURES FOR ENTITY RULES AND VARIANCES.—

“(A) IN GENERAL.—A delegation agreement under this subsection shall specify the procedures by which the affiliated regional reliability entity may propose entity rules or variances for review by the electric reliability organization.

“(B) INTERCONNECTION-WIDE ENTITY RULES AND VARIANCES.—In the case of a proposal for an entity rule or variance that would apply on an interconnection-wide basis, the electric reliability organization shall approve the entity rule or variance unless the electric reliability organization makes a written finding that the entity rule or variance—

“(i) was not developed in a fair and open process that provided an opportunity for all interested parties to participate;

“(ii) would have a significant adverse impact on reliability or commerce in other interconnections;

“(iii) fails to provide a level of reliability of the bulk-power system within the interconnection such that the entity rule or variance would be likely to cause a serious and substantial threat to public health, safety, welfare, or national security; or

“(iv) would create a serious and substantial burden on competitive markets within the interconnection that is not necessary for reliability.

“(C) NONINTERCONNECTION-WIDE ENTITY RULES AND VARIANCES.—In the case of a proposal for an entity rule or variance that would apply only to part of an interconnection, the electric reliability organization shall approve the entity rule or variance if the affiliated regional reliability entity demonstrates that the proposal—

“(i) was developed in a fair and open process that provided an opportunity for all interested parties to participate;

“(ii) would not have an adverse impact on commerce that is not necessary for reliability;

“(iii) provides a level of bulk-power system reliability that is adequate to protect public health, safety, welfare, and national security and would not have a significant adverse impact on reliability; and

“(iv) in the case of a variance, is based on a justifiable difference between regions or subregions within the affiliated regional reliability entity’s geographic area.

“(D) ACTION BY THE ELECTRIC RELIABILITY ORGANIZATION.—

“(i) IN GENERAL.—The electric reliability organization shall approve or disapprove a proposal under subparagraph (A) within 120 days after the proposal is submitted.

“(ii) FAILURE TO ACT.—If the electric reliability organizations fails to act within the time specified in clause (i), the proposal shall be deemed to have been approved.

“(iii) SUBMISSION TO THE COMMISSION.—After approving a proposal under subparagraph (A), the electric reliability organization shall submit the proposal to the Commission for approval under the procedures prescribed under subsection (e).

“(E) DIRECT SUBMISSIONS.—An affiliated regional reliability entity may not submit a proposal for approval directly to the Commission except as provided in subsection (e)(4).

“(4) FAILURE TO REACH DELEGATION AGREEMENT.—

“(A) IN GENERAL.—If an affiliated regional reliability entity requests, consistent with paragraph (1), that the electric reliability organization delegate authority to it, but is unable within 180 days to reach agreement with the electric reliability organization with respect to the requested delegation, the entity may seek relief from the Commission.

“(B) REVIEW BY THE COMMISSION.—The Commission shall order the electric reliability organization to enter into a delegation agreement under terms specified by the Commission if, after notice and opportunity for comment, the Commission determines that—

“(i) a delegation to the affiliated regional reliability would—

“(I) meet the requirements of paragraph (1); and

“(II) would be just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

“(ii) the electric reliability organization unreasonably withheld the delegation.

“(5) ORDERS TO MODIFY DELEGATION AGREEMENTS.—

“(A) IN GENERAL.—On complaint, or on motion of the Commission, after notice to the appropriate affiliated regional reliability entity, the Commission may order the electric reliability organization to propose a modification to a delegation agreement under this subsection if the Commission determines that—

“(i) the affiliated regional reliability entity—

“(I) no longer has the capacity to carry out effectively or efficiently the implementation or enforcement responsibilities under the delegation agreement;

“(II) has failed to meet its obligations under the delegation agreement; or

“(III) has violated this section;

“(ii) the rules, practices, or procedures of the affiliated regional reliability entity no longer provide for fair and impartial discharge of the implementation or enforcement responsibilities under the delegation agreement;

“(iii) the geographic boundary of a transmission entity approved by the Commission is not wholly within the boundary of an affiliated regional reliability entity, and the difference in boundaries is inconsistent with the effective and efficient implementation and administration of bulk-power system reliability; or

“(iv) the agreement is inconsistent with a delegation ordered by the Commission under paragraph (4).

“(B) SUSPENSION.—

“(i) IN GENERAL.—Following an order to modify a delegation agreement under subparagraph (A), the Commission may suspend the delegation agreement if the electric reliability organization or the affiliated regional reliability entity does not propose an appropriate and timely modification.

“(ii) ASSUMPTION OF RESPONSIBILITIES.—If a delegation agreement is suspended, the electric reliability organization shall assume the responsibilities delegated under the delegation agreement.

“(i) ORGANIZATION MEMBERSHIP.—Each system operator shall be a member of—

“(1) the electric reliability organization; and

“(2) any affiliated regional reliability entity operating under an agreement effective under subsection (h) applicable to the region in which the system operator operates, or is responsible for the operation of, a transmission facility.

“(j) ENFORCEMENT.—

“(1) DISCIPLINARY ACTIONS.—

“(A) IN GENERAL.—Consistent with procedures approved by the Commission under subsection (d)(4)(H), the electric reliability organization may impose a penalty, limitation on activities, functions, or operations, or other disciplinary action that the electric reliability organization finds appropriate against a bulk-power system user if the electric reliability organization, after notice and an opportunity for interested parties to be heard, issues a finding in writing that the bulk-power system user has violated an organization standard.

“(B) NOTIFICATION.—The electric reliability organization shall immediately notify the Commission of any disciplinary action imposed with respect to an act or failure to act of a bulk-power user that affected or threatened to affect bulk-power system facilities located in the United States.

“(C) RIGHT TO PETITION.—A bulk-power system user that is the subject of disciplinary action under paragraph (1) shall have the right to petition the Commission for a modification or rescission of the disciplinary action.

“(D) INJUNCTIONS.—If the electric reliability organization finds it necessary to prevent a serious threat to reliability, the electric reliability organization may seek injunctive relief in the United States district court for the district in which the affected facilities are located.

“(E) EFFECTIVE DATE.—

“(i) IN GENERAL.—Unless the Commission, on motion of the Commission or on application by the bulk-power system user that is the subject of the disciplinary action, suspends the effectiveness of a disciplinary action, the disciplinary action shall take effect on the 30th day after the date on which—

“(I) the electric reliability organization submits to the Commission—

“(aa) a written finding that the bulk-power system user violated an organization standard; and

“(bb) the record of proceedings before the electric reliability organization; and

“(II) the Commission posts the written finding on the Internet.

“(ii) DURATION.—A disciplinary action shall remain in effect or remain suspended unless the Commission, after notice and opportunity for hearing, affirms, sets aside, modifies, or reinstates the disciplinary action.

“(iii) EXPEDITED CONSIDERATION.—The Commission shall conduct the hearing under procedures established to ensure expedited consideration of the action taken.

“(2) COMPLIANCE ORDERS.—The Commission, on complaint by any person or on motion of the Commission, may order compliance with an organization standard and may impose a penalty, limitation on activities, functions, or operations, or take such other disciplinary action as the Commission finds appropriate, against a bulk-power system user with respect to actions affecting or threatening to affect bulk-power system facilities located in the United States if the Commission finds, after notice and opportunity for a hearing, that the bulk-power system user has violated or threatens to violate an organization standard.

“(3) OTHER ACTIONS.—The Commission may take such action as is necessary against the electric reliability organization or an affiliated regional reliability entity to ensure compliance with an organization standard, or any Commission order affecting electric reliability organization or affiliated regional reliability entity.

“(k) RELIABILITY REPORTS.—The electric reliability organization shall—

“(1) conduct periodic assessments of the reliability and adequacy of the interconnected bulk-power system in North America; and

“(2) report annually to the Secretary of Energy and the Commission its findings and recommendations for monitoring or improving reliability and adequacy.

“(l) ASSESSMENT AND RECOVERY OF CERTAIN COSTS.—

“(1) IN GENERAL.—The reasonable costs of the electric reliability organization, and the reasonable costs of each affiliated regional reliability entity that are related to implementation or enforcement of organization standards or other requirements contained in a delegation agreement approved under subsection (h), shall be assessed by the electric reliability organization and each affiliated regional reliability entity, respectively, taking into account the relationship of costs to each region and based on an allocation that reflects an equitable sharing of the costs among all electric energy consumers.

“(2) RULES.—The Commission shall provide by rule for the review of costs and allocations under paragraph (1) in accordance with the standards in this subsection and subsection (d)(4)(F).

“(m) APPLICATION OF ANTITRUST LAWS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the following activities are rebuttably presumed to be in compliance with the antitrust laws of the United States:

“(A) Activities undertaken by the electric reliability organization under this section or affiliated regional reliability entity operating under a delegation agreement under subsection (h).

“(B) Activities of a member of the electric reliability organization or affiliated regional reliability entity in pursuit of the objectives of the electric reliability organization or affiliated regional reliability entity under this section undertaken in good faith under the rules of the organization of the electric reliability organization or affiliated regional reliability entity.

“(2) AVAILABILITY OF DEFENSES.—In a civil action brought by any person or entity against the electric reliability organization or an affiliated regional reliability entity alleging a violation of an antitrust law based on an activity under this Act, the defense of primary jurisdiction, and immunity from suit and other affirmative shall be available to the extent applicable.

“(n) REGIONAL ADVISORY ROLE.—

“(1) ESTABLISHMENT OF REGIONAL ADVISORY BODY.—The Commission shall establish a regional advisory body on the petition of the Governors of at least two-thirds of the States within a region that have more than one-half of their electrical loads served within the region.

“(2) MEMBERSHIP.—A regional advisory body—

“(A) shall be composed of 1 member from each State in the region, appointed by the Governor of the State; and

“(B) may include representatives of agencies, States, and Provinces outside the United States, on execution of an appropriate international agreement described in subsection (f).

“(3) FUNCTIONS.—A regional advisory body may provide advice to the electric reliability organization, an affiliated regional reliability entity, or the Commission regarding—

“(A) the governance of an affiliated regional reliability entity existing or proposed within a region;

“(B) whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

“(C) whether fees proposed to be assessed within the region are—

“(i) just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

“(ii) consistent with the requirements of subsection (l).

“(4) DEFERENCE.—In a case in which a regional advisory body encompasses an entire interconnection, the Commission may give deference to advice provided by the regional advisory body under paragraph (3).

“(o) APPLICABILITY OF SECTION.—This section does not apply outside the 48 contiguous States.

“(p) REHEARINGS; COURT REVIEW OF ORDERS.—Section 313 applies to an order of the Commission issued under this section.

“(q) PRESERVATION OF THE STATE AUTHORITY.—

“(1) The Electric Reliability Organization shall have authority to develop, implement, and enforce compliance with standards for the reliable operation of only the Bulk Power System.

“(2) This section does not provide the Electric Reliability Organization or the Commission with the authority to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

“(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any Organization Standard.

“(4) Not later than 90 days after the application of the Electric Reliability Organization or other affected party, the Commission shall issue a final order determining whether a state action is inconsistent with an Organization Standard, after notice and opportunity for comment, taking into consideration any recommendations of the Electric Reliability Organization.

“(5) The Commission, after consultation with the Electric Reliability Organization, may stay the effectiveness of any state action, pending the Commission’s issuance of a final order.”.

(b) ENFORCEMENT.—

(1) GENERAL PENALTIES.—Section 316(c) of the Federal Power Act (16 U.S.C. 825o(c)) is amended—

(A) by striking “subsection” and inserting “section”; and

(B) by striking “or 214” and inserting “214 or 215”.

(2) CERTAIN PROVISIONS.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended by striking “or 214” each place it appears and inserting “214, or 215”.

PURPOSE OF THE MEASURE

The purpose of S. 2071, as amended, is to promote the reliability of the bulk power market by creating an industry-run, Federal Energy Regulatory Commission (FERC) overseen, organization that sets enforceable rules for the use of the interstate transmission grid. It also ensures that States have an appropriate role in promoting reliability.

SUMMARY OF MAJOR PROVISION

S. 2071, as amended, authorizes the establishment of a self-regulating Electric Reliability Organization (ERO). The ERO would establish, monitor and enforce compliance with reliability standards for the interstate bulk power system.

The organization of the ERO and its reliability rules would be subject to approval and oversight by the FERC. The reliability standards established by the ERO would be mandatory on all owners, users and operators of the interstate bulk power system. Activities conducted in compliance with statutory requirements receive a rebuttable presumption of compliance with the Federal antitrust laws.

Upon enactment of S. 2071, the North American Electric Reliability Council (NERC) and its individual regional reliability councils may file with FERC those existing reliability standards they propose to be mandatory in the interim before the new ERO is approved by FERC and it establishes reliability standards. FERC must approve any such standards before they become mandatory.

FERC may select only one organization to become the ERO. FERC must select from applicants the one which will best meet the criteria for governance. The statutory criteria include: having the ability to develop, implement and enforce reliability; providing for voluntary membership; having fair representation on the board of directors and fair management; ensuring that no two industry sectors control the ERO and no individual industry sector can veto an ERO action; have an independent board of directors; having a funding mechanism that is just, reasonable, not unduly discriminatory or preferential and in the public interest; having procedures for the development of reliability standards, including notice and opportunity for public comment, openness, a balancing of interests and due process; having procedures for use in case of an emergency; having fair and impartial procedures for implementation and enforcement of organization standards; having procedures of notice an opportunity for public observation at all meetings; providing for the consideration of recommendations of States and State commissions; and addressing such other matters as the FERC considers appropriate to ensure that the procedures, governance and funding of the organization are just, reasonable, not unduly discriminatory or preferential and are in the public interest.

FERC must approve all new and modified ERO reliability standards before they become effective, and FERC must provide an opportunity for public comment on such standards. FERC is required to give due weight to the technical expertise of the ERO with respect to new or modified standards, but it is not to give deference to the ERO with respect to the competitive effect of a standard. In the case of an emergency, the standard can take effect immediately, followed by notice and comment and FERC action.

The ERO may delegate authority to implement and enforce standards to an affiliated regional reliability entity (ARRE). An ARRE would be similar to the current regional reliability councils. An ARRE must meet most of the same standards for its organization and governance as the ERO, except that an ARRE is not required to have an independent board of directors. FERC must approve all agreements to delegate authority to an ARRE. The ERO

reserves the right to set organization standards. However, the ARRE may establish regional variances, if approved by the ERO and FERC. A delegation of authority to an ARRE on an interconnection-wide basis is rebuttably presumed to promote bulk power system reliability, one of the requirements for ARRE approval. A delegation of authority to an ARRE on less than an interconnection-wide basis requires the ARRE to make an affirmative showing that it meets the necessary requirements. There is also a presumption in favor of variances adopted on an interconnection-wide basis. Similarly, variances adopted on less than an interconnection-wide basis can be adopted only upon an affirmative showing of compliance with the statutory standards for approval of variances. Like the ERO, an ARRE can enforce reliability standards and take disciplinary action, subject to review by FERC, against system operators and users.

The legislation does not give the Electric Reliability Organization or any affiliated regional reliability entity any authority to build or to pay for the building of any transmission or other facility necessary for a bulk power user to comply with a reliability requirement. The cost of complying with a reliability requirement is the responsibility of bulk power users, not the Electric Reliability Organization or any affiliated regional reliability entity.

BACKGROUND AND NEED

The Nation's interstate electric transmission grid is an extremely complex network that is also interconnected with the transmission grid in Canada and Mexico. It has developed over decades with various voluntary agreements between utilities and others that allow areas to work together to respond to changing power needs that vary from day-to-day, hour-to-hour and even minute-to-minute. Many of these voluntary agreements were developed after a disastrous event in 1965 that led to a major blackout in New York City and throughout other parts of the Northeast. While this voluntary system has worked well for the past 35 years, fundamental changes in the electric power industry are making this a voluntary system less workable for the future.

With the expansion of competition in the wholesale electric power market—starting with the 1992 Energy Policy Act—the system of buying and selling wholesale power is now many times more complex than it was less than a decade ago. With a stronger economy, electricity usage has increased while thousands of new electricity marketers and buyers have created new stresses on the system. Moreover, the emergency of competition in the wholesale power market has changed the ability and willingness of market participants to act voluntarily, particularly when it is not in their economic interest to do so.

As a result, the existing scheme of voluntary compliance with voluntary industry reliability rules is simply no longer adequate. There has been a marked increase in the number and seriousness of violations of voluntary reliability rules. Under a voluntary system, there is no penalty for violating a reliability standard. The users and operators of the system, who used to cooperate voluntarily on reliability matters, are now competitors without the same incentives to cooperate with each other or comply with voluntary reliability rules.

In order to maintain grid reliability, rules must be made mandatory and enforceable, and fairly applied to all participants in the electricity market. To meet this need, NERC and a broad coalition of industry organizations have proposed the creation of an industry self-regulatory organization to develop and enforce mandatory reliability rules, with FERC oversight in the United States to make sure the ERO and its affiliated regional reliability entities operate effectively and fairly. The proposal follows the model of the Securities and Exchange Commission in its oversight of securities industry self-regulatory organizations (the stock exchanges and the National Association of Securities Dealers).

To address this situation, more than a year ago a group of electricity industry officials began meeting to develop legislative language needed in this new era in electricity. The language in S. 2071, as amended, is supported by a broad coalition representing virtually all aspects of the electric power industry. It is supported by the American Public Power Association, the Edison Electric Institute, the Electric Power Supply Association, the Electricity Consumers Resource Council, the National Rural Electric Cooperative Association and the Canadian Electricity Association.

S. 2071 authorizes the creation of a reliability organization to develop and enforce mandatory reliability rules. FERC would approve and oversee this organization to make sure it and its affiliated regional reliability entities operate effectively and fairly. The reliability standards that would be developed and enforced by the new reliability organization only concern the operational security of the bulk power system. The reliability organization would not deal with generation adequacy, reserve margins, distribution system reliability, safety, transmission siting, or retail customer choice plans.

LEGISLATIVE HISTORY

S. 2071 was introduced on February 10, 2000. Hearings were held by the Committee on April 11, April 13 and April 27, 2000. Hearings were held on related legislation on June 29 and July 15, 1999, and on April 11, 13 and 27, 2000.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 21, 2000, by a voice vote with a quorum present, recommends that the Senate pass S. 2071, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 2071, the Committee adopted an amendment in the nature of a substitute offered by Senators Murkowski, Bingaman and Gorton. The amendment incorporated language clarifying the jurisdiction of the States and State commissions in the context of an Electric Reliability Organization.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act may be cited as the “Electric Reliability 2000 Act”.

Section 2(a). Electric reliability organization

Section 2(a) adds a new section 215 to the Federal Power Act.

Section 215(a). Definitions.

Subsection (a) defines terms used in section 215.

Section 215(b). Commission authority

Subsection (b) gives FERC jurisdiction over the Electric Reliability Organization (ERO), Affiliated Regional Reliability Entities, system operators, and bulk-power system users (i.e., utilities that own, operate, or use any part of an interconnected transmission grid) for purposes of approving organization standards and enforcing compliance.

Section 215(c). Existing reliability standards

Subsection (c) authorizes FERC to approve any existing reliability standard that NERC and its regional reliability councils propose be made mandatory and enforceable if FERC finds that the standard is “just, reasonable, not unduly discriminatory or preferential, and in the public interest.” Once approved by FERC, the standard is mandatory, applicable, and enforceable by FERC until withdrawn, disapproved or superseded.

Section 215(d). Designation of electric reliability organization

Subsection (d) directs FERC to issue rules governing the approval of the ERO. Subsection (d)(4) requires FERC to approve an application for designation as the ERO if FERC determines that the applicant has the “ability to develop, implement, and enforce” reliability standard and will operate in a fair manner.

Section 215(e). Organization standards

Subsection (e) provides for the development of new or modified reliability standards by the ERO. Subsection (e)(2) provides for FERC review of new or modified standards and requires FERC to approve them if they are “just, reasonable, not unduly discriminatory or preferential, and in the public interest.”

Subsection (e)(4) permits an Affiliated Regional Reliability Entity to propose to the ERO variances or “entity rules” (i.e., rules adopted by a regional entity to implement or enforce an organization standard in a specific region). Regional entities may request FERC to review variances or entity rules that the ERO does not approve.

Section 215(f). Coordination with Canada and Mexico

Subsection (f) directs the ERO to take steps to gain recognition in Canada and Mexico and the President to use his best efforts to enter into agreements with Canada and Mexico to ensure international compliance with organization standards.

Section 215(g). Changes in procedure, governance, or funding

Subsection (g) requires the ERO to submit proposed changes in procedure, governance, or funding to FERC for review and approval.

Section 215(h). Delegations of authority

Subsection (h)(1) requires the ERO to delegate authority to implement and enforce organization standards within regions to the Affiliated Regional Reliability Entities.

Subsection (h)(2) requires a delegation of authority to a regional entity to be approved by FERC. FERC must approve if the delegation: (1) would promote the “effective and efficient implementation and administration bulk-power system reliability”; and (2) is “just, reasonable, not unduly discriminatory or preferential, and in the public interest.”

Subsection (h)(3) establishes the factors the ERO must use to review variances and entity rules.

Subsection (h)(4) gives FERC the authority to order the ERO to delegate authority to a regional entity if the delegation was unreasonably withheld.

Subsection (h)(5) gives FERC the authority to order the ERO to modify or suspend a delegation of authority under certain circumstances.

Section 215(i). Organization membership

Subsection (i) requires system operators to join the ERO and the applicable Affiliated Regional Reliability Entity.

Section 215(j). Enforcement

Subsection (j)(1) authorizes the ERO to take disciplinary action against a bulk-power system user for violation of a reliability standard or to seek injunctive relief to prevent a serious threat to reliability. The bulk-power system user may petition FERC for modification or rescission of a disciplinary action.

Subsection (j)(2) authorizes FERC to take disciplinary action against a bulk-power system user for violation of a reliability standard. The Committee does not intend subsection (j)(2) to be read to preclude a municipality from filing a complaint under the subsection.

Subsection (j)(3) authorizes FERC to take action against the ERO or an Affiliated Regional Reliability Entity to ensure compliance with an organization standard or FERC order.

Section 215(k). Reliability reports

Subsection (k) requires the ERO to conduct periodic assessments of reliability and report annually to the Secretary of Energy and FERC.

Section 215(l). Assessment and recovery of certain costs

Subsection (l) authorizes the ERO and the Affiliated Regional Reliability Entities to assess their reasonable costs.

Section 215(m). Application of antitrust laws

Subsection (m) rebuttably presumes that the activities of the ERO under section 215, the activities of an Affiliated Regional Reli-

ability Entity under a delegation agreement, and the activities of a member of either the ERO or a regional entity undertaken in good faith under the rules of the Organization or a regional entity are in compliance with the antitrust laws.

Section 215(n). Regional advisory role

Subsection (n) directs FERC to establish a regional advisory body upon the petition of the governors of at least two-thirds of the states within a region. The advisory body may advise the ERO, the regional entity, or FERC on the governance of the regional entity, reliability standards, and fees.

Section 215(o). Applicability of section

Section (o) excludes Alaska and Hawaii from operation of section 215.

Section 215(p). Rehearings; court review of orders

Subsection (p) makes section 313 of the Federal Power Act (providing for judicial review of FERC orders) applicable to FERC orders issued under section 215.

Section 215(q). Preservation of state authority

Subsection (q)(1) states that the ERO has authority over reliability standards for the bulk-power system only.

Subsection (q)(2) states that section 215 does not authorize either the ERO or FERC to set or enforce standards for adequacy or safety of electric facilities or services.

Subsection (q)(3) states that section 215 does not preempt a state from ensuring the safety, adequacy, or reliability of electric service within the State, so long as the action is not inconsistent with an Organization Standard. Under sections 215(c)(2) and 215(e)(2)(D)(i), FERC must find an existing reliability standard or a new or modified Organization Standard to be “just, reasonable, not unduly discriminatory or preferential, and in the public interest.” A State reliability measure that is not just and reasonable, is unduly discriminatory or preferential, or is not in the public interest, and overlaps an Organization Standard would, necessarily, be inconsistent with the Organization Standard.

Subsection (q)(4) requires FERC to issue a final order determining whether a state action is inconsistent with an Organization Standard within 90 days after requested by the ERO or other affected party.

Subsection (q)(5) permits FERC to stay the effectiveness of a state action pending issuance of a final FERC order.

Section 2(b). Enforcement

Section 2(b) makes conforming changes to section 316(c) of the Federal Power Act (excluding orders issued under certain provisions of the Act from the Act’s general penalty provision) and section 316A of the Federal Power Act (providing for civil penalties for the violation of certain other provisions of the Act).

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the

report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out this measure.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the provisions of the bill. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of this measure.

EXECUTIVE COMMUNICATIONS

The pertinent communications received by the Committee setting forth Executive agency views relating to this measure are set forth below:

STATEMENT OF BILL RICHARDSON, SECRETARY, U.S. DEPARTMENT OF ENERGY

INTRODUCTION

Mr. Chairman, thank you for inviting me today to present the Administration's views on the various electricity restructuring bills that are pending before the Senate Energy and Natural Resources Committee. I would like to commend you, the Ranking Member, Senator Bingaman, as well as other members of this Committee, for your leadership on this issue, which is critical to ensuring that consumers across this country will benefit from competitive electricity markets. The bills being addressed today contain concepts that merit serious consideration as Congress moves forward in enacting comprehensive electricity restructuring legislation.

Almost one year ago to the day, when transmitting the Administration's proposed Comprehensive Electricity Competition Act (CECA),¹ I called on Congress to enact comprehensive electricity restructuring legislation. Mr. Chairman, I have two messages today: (1) the need for Federal legislation is more urgent than ever; and (2) given recent developments, I am increasingly optimistic about the prospects for congressional action this year.

There is growing evidence that our interstate electricity markets are in need of repair. Essential investments are not being made because of the uncertainty that exists due

¹The Administration transmitted CECA to Congress in two separate parts. Both parts were introduced in the Senate by Senators Murkowski and Bingaman (upon request)—S. 1047 and S. 1048—on May 13. S. 1047 is pending before this Committee. S. 1048 is pending before the Senate Finance Committee.

to delays in enacting legislation. Generating capacity reserve margins have significantly decreased. The construction of new major transmission facilities is almost non-existent and existing transmission capacity is tightly constrained in certain regions. At the same time, the demand for electricity continues to increase while funding for energy efficiency efforts is being reduced. If Congress fails to act soon, the development of competitive electricity markets will be stunted. And, I fear that an increasing number of Americans will experience the price spikes, blackouts and brownouts that residents of certain regions of the country witnessed during last summer's heat waves.

Mr. Chairman, recent developments suggest that the consensus you have said is crucial in order to pass electricity restructuring legislation may, in fact, be close at hand. Last week a broad group of stakeholders representing consumers, the elderly, natural gas companies, electricity generators, electricity marketers, municipal utilities and investor-owned utilities released a comprehensive set of principles that they all agree should be included in Federal restructuring legislation. I understand that another group of stakeholders has also been preparing a set of comprehensive principles. This is a significant step forward. While these groups will need to reach out to other stakeholders as the legislative process moves forward, and I expect them to do so, there is reason to believe that enough consensus will exist to allow Congress to enact a bill this year.

I would like to begin my testimony today by discussing an issue that is inextricably linked to the need to enact comprehensive electricity restructuring legislation—the reliability of our electric grids. Thereafter, I will focus my remarks on a number of key issues that must be addressed in a comprehensive bill and will compare how the bills pending before this Committee proposed to resolve these issues.

RELIABILITY

Mr. Chairman, several regions of the country have experienced major problems in recent summers. As the heat and humidity rose, some utilities found it increasingly difficult to meet consumer demands for electric power. Spot prices for electricity rose dramatically. Elected officials and utility executives made urgent public appeals for conservation. Factories were forced to shut down their operations and sent workers home. Some areas experienced rolling blackouts. Other areas lost power due to failures in over-worked and outdated distribution facilities.

Reliability problems have not been confined to summer heat waves. Several weeks ago, a large portion of New Mexico suffered a blackout after a grass fire initiated a series of events that crippled much of the State's electric grid. In addition, recent warnings from the Pacific Northwest suggest that there is a 1 in 4 chance of significant

power supply disruptions during future winters in that region.

Last year I asked a team of experts from the Department of Energy, our national laboratories and academia to review the power outage events of last summer and provide recommendations on how we can protect and enhance the reliability of our electric grids. The Power Outage Study Team (POST), which recently submitted its final report on last year's outages and related incidents, found that the new industry structure should ultimately improve reliability. However, the uncertainties associated with the slow pace of the transition to competition have endangered reliability. More disturbingly, the POST report concluded that these problems may get worse before they get better.

Clearly, many issues associated with reliability involve the distribution system, which has been and will continue to be within the purview of the state and local governments. Nevertheless, Mr. Chairman, much can be done at the Federal level. The Power Outage Study Team's final report contained 12 recommendations concerning how the Federal government can help. Some of these recommended changes can be implemented through administrative actions. Others, however, require the enactment of comprehensive legislation, including provisions that will create fair and transparent markets that will spur new efficiencies, investments and innovation that will keep the lights on and the air conditioners and computers humming.

NEED FOR FEDERAL ACTION

Several years ago, hearings like this one focused on the pros and cons of doing away with the vertically-integrated monopoly utility that generated, transmitted and distributed the power consumed in a state-designated monopoly service territory. That debate is over. As a result of the Energy Policy Act of 1992 and the efforts of the Federal Energy Regulatory Commission (FERC), independent power producers are gaining an increasing share of the generation market. Utilities are now buying power from competing generators and marketers at competitive rates rather than building plants on their own.

Restructuring and competition are not limited to the wholesale markets. Twenty-five states plus the District of Columbia have now adopted electricity restructuring proposals that allow for competition at the retail level. Almost every other state has the matter under active consideration.

The Clinton Administration believes that this is a positive development. Competition, if structured properly, will be good for consumers, good for the economy and good for the environment. Companies that had no incentive to offer lower prices, better service, or new products are now being required to compete for customers. Consumers will save money on their electric bills. Lower electric rates will also make businesses more competitive by lowering their costs

of production. By promoting energy conservation and the use of cleaner and more efficient technologies, competition will lead to reduced emissions of greenhouse gases and conventional air pollutants.

Nevertheless, the full benefits promised by competition can be realized only within an appropriate Federal statutory framework. What we do at the Federal level, and when we do it, will have a profound impact on the success of wholesale competitive markets, as well as on state and local retail markets. Federal action is necessary for state restructuring programs to achieve their maximum potential. Electrons do not respect state borders. Electricity markets are becoming increasingly regional and multi-regional. Actions in one state can and do affect consumers in other states.

States alone can't ensure that regional power and transmission markets are efficient and competitive. They can't provide for the continued reliability of the interstate bulk power grid. And states can't remove the Federal statutory impediments to competition and enable competition to thrive in the regions served by Federal utilities.

Mr. Chairman, I recognize that some members of this Committee represent states that may consider retail competition proposals at a less rapid pace than others. Nevertheless, Federal action should be equally important to their constituents. If wholesale markets are not working efficiently, the impediments to the flow of power between states will cause rates to go up and reliability to be endangered.

OTHER ISSUES

I want to focus the remainder of my remarks on six issues that must be addressed by Federal restructuring legislation: (1) improving the efficiency and effectiveness of the interstate transmission system; (2) promoting regional transmission organizations; (3) preventing the abuse of market power; (4) establishing mandatory bulk power reliability standards; (5) ensuring that renewable energy and other public benefits do not get left behind; and (6) removing Federal impediments to the development of competitive wholesale and retail electric markets.

Reliability standards

The North American Electric Reliability Council (NERC) has worked diligently to protect the reliability of the bulk power system. However, as we move to a more competitive environment, the reliability of our bulk power systems can no longer be entrusted to voluntary compliance with standards. Significant support has developed for a proposal to have an electric reliability organization, overseen by FERC, establish mandatory reliability standards. S. 1047 authorizes the development and enforcement of mandatory reliability standards established by a self-regulated independent reliability organization with oversight by FERC in a manner that is generally consistent with the reliability

standard language contained in S. 2098, S. 516 and S. 2071. In addition, S. 1273 also promotes the development of mandatory reliability standards.

Mr. Chairman, some have argued that Congress should enact a stand-alone bill that authorizes the establishment of mandatory reliability standards, such as S. 2071, in order to enhance reliability. Unfortunately, improving and protecting reliability is significantly more complicated. While mandatory standards are an essential component of any effort to keep the lights on, by themselves they are insufficient. We can develop and enforce rules. However, if (1) the markets are constrained and power isn't flowing efficiently in interstate commerce; (2) we are not sending the appropriate market signals that will lead to the addition of necessary power plant and transmission capacity and alternatives, such as distributed generation; (3) energy efficiency efforts are hampered; and (4) we don't have a sufficient and skilled utility workforce, the reliability of our electricity grids will continue to be imperiled. That is why we must adopt comprehensive electricity restructuring legislation.

STATEMENT OF JAMES J. HOECKER, CHAIRMAN, FEDERAL
ENERGY REGULATORY COMMISSION

Mr. Chairman and Members of the Committee, I very much appreciate the invitation to appear here today to discuss the proposed electricity legislation now before this Committee. Permit me to applaud you, Mr. Chairman, and the Committee for focusing attention on the restructuring of the electric power industry, which is a matter of national importance. A timely transition to a competitive, efficient, and reliable wholesale market for electricity is in everyone's interest, whether or not there is retail competition. For that reason, I am pleased to assist Congress in its efforts to bring the benefits of this restructuring to the American people.

The bills before the Committee address a number of critical issues. I urge the Congress to address as many of these matters as it can. However, from the perspective of the Federal Energy Regulatory Commission (FERC), the heart of the restructuring debate at this juncture is the future operation of the interstate transmission grid. It is the strategic asset, the integrated network platform, upon which any competitive and transparent wholesale power market must be built. Interstate bulk power trade increased dramatically in the 1990s, as electricity demand increased and impediments to market access began to diminish. The entry of new participants in that market, the arrival of e-commerce and new financial instruments, and new technologies will greatly benefit the electricity economy unless competition is thwarted by immature market mechanisms, inefficient transmission network operations, or parochial and discriminatory practices by transmission owners. Electricity competition cannot thrive in a commer-

cial environment with conflicting market rules, congestion, barriers to entry, vertical integration of transmission and generation functions, or declining reliability. The success of any restructuring legislation will ultimately be judged solely on whether it contributes to overcoming these obstacles and achieving good market outcomes.

The Commission has already taken major steps within its authority to make the interstate transmission grid available to all wholesale users and to encourage regional efficient operation of the transmission grid. Its fundamental regulatory objectives are: (1) to substitute competition for price regulation in wholesale power markets to the extent possible; and (2) to regulate essential transmission facilities so as to enable competition in power markets. If these objectives are effectively met, American consumers will benefit from better prices, a greater selection of services, and enhanced reliability. Because there remain important impediments to the Commission's work in this area, it is now time for Congress to act.

There are four major areas in which Congress needs to legislate, if we are to achieve and maintain competitive wholesale markets. Legislation is needed to: (1) place all transmission, even if it is publicly-owned or cooperatively-owned, under the same non-discriminatory open access standards; (2) reinforce Commission authority over regional transmission organizations ("RTOs") that will operate the transmission grid on a reliable, regional basis and reduce obstacles to competition among sources of generation; (3) establish mandatory reliability rules to protect the integrity of transmission service, relying on a self-regulating organization with appropriate Federal oversight and enforcement; and (4) enhance the Commission's authority to remedy market power. These actions to promote reliable transmission and competitive wholesale power markets will benefit consumers regardless of policy decisions about opening retail markets to competition.

Today, I want to share with the Committee my observations about the difficulties we seek to solve and how we have approached those problems so far. I will then discuss in detail the legislative actions needed to achieve competitive wholesale power markets, and discuss how the bills pending before you would or would not accomplish that goal.

* * * * *

RELIABILITY

Let me turn next to the issue of reliability. In the past, regulators and industry participants relied upon voluntary industry cooperation to establish reliability standards and practices. Regional reliability councils and the North American Electric Reliability Council (NERC), comprised primarily of transmission-owning utilities, relied upon voluntary cooperation and peer pressure to ensure compliance with the standards they established.

Competition in power markets has increased concern that reliability rules can no longer be set or enforced in the same voluntary manner as in the past. Power markets today have many more participants and transactions. Faced with competitive pressure, some participants may be prompted to cut corners on reliability. Many observers, including NERC and the industry itself, have concluded that a system of mandatory reliability rules is needed to ensure that competition does not compromise the security of our Nation's electric transmission system. Federal legislation is needed to achieve this end. I believe that appropriate reliability legislation is critical to a well-functioning industry and that the consensus legislation sponsored by NERC and included in many of the bills pending before you contains the fundamental elements of sound legislation in this area.

Congress should understand, however, that mandatory reliability rules are not enough to ensure the reliability of the grid. In addition, the market rules must elicit sufficient investment in new generation and transmission facilities. In the natural gas industry, for example, reliability is fostered in the first instance by market rules that elicit investment in the production and transportation of the commodity. In the electric industry, we can achieve the same result by ensuring that generators can get their power to as many customers as possible and that transmission owners have the incentives to meet the needs of transmission users. My recommendations above on open access and RTOs support this goal.

An important State-Federal issue has arisen in the context of the debate on reliability legislation: the appropriate role of States in protecting reliability of service to consumers and the role of the Commission in protecting the integrity of the bulk power transmission system and ensuring that all transmission users are served by the interstate grid on a non-discriminatory basis.

Jurisdictional issues should not be allowed to obscure the need for a new enforcement system. There are important policy and operational issues that must be addressed. The transmission grid is increasingly being used for transmission that, either contractually or because of the laws of physics affecting the flow of electrons, cross State (and even international) borders. This has increased concern that a mandatory reliability mechanism must be developed to ensure that these interstate transactions do not compromise the transmission grid or the quality of service. This is a fundamental issue of interstate commerce. The Nation's need for a reliable transmission grid ought to prevail over the current jurisdictional disagreements. While State and local authorities legitimately want to protect retail consumers within their particular States, there is also a significant Federal interest in protecting reliability and fair commerce across State borders. I am confident that legislation can be developed to address both Federal and State concerns.

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S. 2071 (INTRODUCED BY SENATOR GORTON)

S. 2071 addresses electric reliability in essentially the same manner as S. 2098 and S. 1047. It would, among other things, amend the FPA to give the Commission the authority to approve and oversee an Electric Reliability Organization tasked with developing mandatory reliability standards. The approach taken in S. 2071 strikes an appropriate policy balance, as I indicated with respect to the reliability provisions of S. 2098 and S. 1047.

Reliability is of fundamental importance and I therefore clearly understand why stand-alone legislation on this subject is attractive. The Commission is prepared to implement such legislation if enacted. Reliable electric service will require more than an effective standard-setting and enforcement mechanism, however. It will require workable markets and the Congress must assist that effort as well.

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STATEMENT OF CURT L. HEBERT, JR., COMMISSIONER,
FEDERAL ENERGY REGULATORY COMMISSION

OVERVIEW

I thank the Committee for the honor of testifying here this morning on the various electricity restructuring bills pending before you. In my opinion, Congress should adopt the principle that legislation should remove obstacles to the natural evolution of the industry. FERC does not need more jurisdiction; indeed, we need less. Right now, the generation and transmission businesses are moving in opposite directions. On the wholesale level, FERC has deregulated prices for generation because of the proliferation of independent power and technology that allows plants to come on line in 18 months or so. Transmission, on the other hand, will have to remain regulated for the foreseeable future. Transmission must become a stand-alone business and respond to the market. It must do so, however, within the framework of regulation, though a new form.

Historically, regulation reined in economic interest for the sake of the public interest. Most people agree that approach failed. From now on, regulation must align economic interest with the public interest. Together, Congress and FERC must act in a way that gives the new model a chance to succeed. What may have worked in the Depression Era no longer works in the Internet Age. In our respective spheres, Congress and the FERC must clear out the underbrush to allow new growth to take over.

FERC and the states can, and, under the right leadership, will remove most regulatory impediments toward efficiency in electricity. Recently, FERC issued Order No. 2000, which flatly states that restructuring will succeed only if transmission becomes a stand-alone business. By unanimous vote, we applied what an economist called a form of performance-based regulation. Rather than write

rules and mandate outcomes, Order No. 2000 laid out a business plan—12 goals, four characteristics and eight functions, for regional transmission organizations to meet.

The Commission opened the door to rate reforms for RTO's to propose as necessary to make the transmission business viable on a stand-alone basis. The Order listed eight, from temporary rate moratoria to performance-based rates. Rather than look at costs, we will focus on value to the customer, as businesses do in the free market. FERC has jurisdiction under current law to approve each of them and many others that RTO's can justify.

People know that about half the States have passed laws opening their retail markets to increased customer choice, to one degree or another. Less well known to most people, some have gone farther. States, such as Wisconsin, have passed laws that require utilities to separate transmission into a separate business. In the case of Wisconsin, the Legislature chose a for-profit company. With transmission as a separate business, FERC has jurisdiction over the wires under current law.

With the right leadership FERC will move forward toward effective restructuring. Incentives and performance-based rates will unleash entrepreneurial initiative. By aligning the public interest with economic interest, doing the right thing for customers will also result in better earnings for shareholders. Transmission companies will establish a business plan in consultation with customers. Companies that meet or exceed the goals in the business plan will earn profits for shareholders. Those that fail will take the risk, and, ultimately, as in any market, will sell their facilities to more efficient entities. All that can happen under FERC's current jurisdiction, without one word of new legislation.

FERC can go only so far, however. Laws enacted as far back as the Depression and as recently as the Carter Administration, that made sense in their time, now act as a drag on restructuring. These laws have the ironic effect of causing harm to the very consumer they were supposed to protect. In addition, unintended consequences of tax law encrust the status quo, at a time that cries out for change. More than the incentives of Order No. 2000, Federal Marketing Agencies, including Bonneville Power Administration and the Tennessee Valley Authority, need legislation to authorize them to become or join Regional Transmission Organizations. Participants in the discussions in the Northwest agree that Congress should act, whether the RTO takes the form of a for-profit transmission company or a not-for-profit system operator.

Worse than doing nothing, Congress can harm the process of restructuring by taking the wrong road and passing unnecessary legislation or laws that point toward more regulation.

RELIABILITY

We hear great clamor over possible reliability problems in a restructured market. Many fear for this summer. I think this is a legitimate issue for discussion. I think, however, that the solution lies in the market, not in creating an organization, under FERC oversight, with FERC having last-resort authority to impose standards on the industry.

I testified on this question before the House Commerce Committee's Subcommittee on Energy and Power. I said then that I oppose FERC having authority to establish reliability standards. I also think that the current system, involving private regional reliability councils establishing the standards needs reform. I favor injecting reliability standards in the performance based rate plans I advocate for utilities. In particular, each plan for each Regional Transmission Organization would contain a target for reliable performance. I envision interested parties negotiating the issue, along with the other factors in the plan for presentation to FERC. Each RTO's earnings would rise or fall on how well it does.

My suggestion then is to create a climate in which that occurs in transmission. Specifically, tie profits to performance—safe performance and an adequate number of transactions. Give transmission companies business plans to meet. Favorable earnings result from good results, losses from poor management. Clearly, we don't need legislation to do that. FERC has the authority to institute performance based rates. We did it in Mississippi. The Public Service Commission put three criteria into the final plans. Two of them fall directly under the category of reliability, and one indirectly. Earnings depended on the number and duration of interruptions, customer satisfaction (using actual complaints) and price into which we factored sales transactions. The companies figured out how to set and meet reserve margins, safety standards and capacity goals. We aligned the private economic interest with the public interest. FERC can do that now.

Lastly, I note that, in other industries, such as electric appliances, the market participants established an organization, Underwriter's Laboratory, to endorse the safety and reliability of their products. RTO's, especially for-profit companies, have the same incentive to form an organization that will establish proper standards. I will illustrate the problem with a governmental mandate. At the most recent FERC public meeting, we considered in the case New York Reliability Council, whether to allow the New York Council to reduce its reserve margin from 22 to 18 percent. We did. It turns out, however, that the study on which the New York Council relied said that 12 percent would ensure smooth operation, but at maximum, 17 percent would do the job. The New York Council threw in 1 percent for good measure! In economic terms, the New York Council either withheld capacity that belongs on the market or wasted

money. A private, for-profit transmission company would have relied on hedging or financial means in case 12 or 17 percent proved too low.

On this issue I think reasonable people can discuss various alternatives.

STATEMENT OF WILLIAM L. MASSEY, COMMISSIONER,
FEDERAL ENERGY REGULATORY COMMISSION

Mr. Chairman and Members of the Committee on Energy and Natural Resources, thank you for the opportunity to testify on the subject of electric restructuring. The Commission is committed to facilitating large and vibrant bulk power markets, yet there are anachronistic jurisdictional and other obstacles to achieving this important goal. I respectfully suggest that the Congressional focus should be on eliminating these obstacles and ensuring reliability. I am concerned that, otherwise, the transition to competitive markets will be prolonged, dramatic price volatility will continue, reliability may suffer, and consumers will be denied truly competitive supply options.

Today, I will focus mostly on what I regard to be an area where reform is most critical to a successful transition to competition: access to, and efficient management of, the transmission grid. Electric power markets are inherently interstate in nature. The laws of physics, and hence power markets, do not respect state boundaries. In order to thrive, such markets must have an open, non-discriminatory, well managed, and efficiently priced interstate transmission network that links buyers and sellers of power. The existing patchwork of inconsistent and outdated jurisdictional rules for this essential interstate delivery system, coupled with splintered network management, create obstacles and uncertainties that undercut the market. If buyers and sellers lack confidence that electric power will be delivered reliably and on reasonable terms and conditions, they will not transact business.

The seminal applicable laws, the Federal Power Act and the Public Utility Holding Company Act, were enacted in 1935, during an era of old fashioned monopolies and cost-of-service regulation. Their purpose was to ensure that monopolies were appropriately regulated; but now, sixty-five years later, our goal is markets. Changes in the law are necessary.

Although I will be commenting on several pending bills, I endorse the Administration's bill (S. 1047) because it provides an excellent framework for resolving virtually all of the concerns I will raise. The Bingaman bill (S. 1273) also responds well to a number of my concerns and thus I commend that bill to the Committee as well.

* * * * *

RELIABILITY

Vibrant markets must be based upon a reliable trading platform with mandatory reliability rules. Yet, under existing law there are no legally enforceable reliability standards. The North American Electric Reliability Council (NERC) does an excellent job preserving reliability, but compliance with its rules is voluntary. A voluntary system, however, is likely to break down in a competitive electricity industry.

I strongly recommend the enactment of provisions such as those in S. 1047, S. 516 and S. 2098 that would lead to the promulgation of mandatory reliability standards. A private standards organization (perhaps a restructured NERC) with an independent board of directors would promulgate mandatory standards applicable to all market participants. These rules would be reviewed by the Commission to ensure that they are not unduly discriminatory. The mandatory rules would then be applied by RTOs, the entities that will be responsible for maintaining short-term reliability in the marketplace.

Mandatory reliability rules are critical to evolving competitive markets, and I urge Congress to enact legislation to accomplish this objective.

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STATEMENT OF LINDA BREATHITT, COMMISSIONER, FEDERAL
ENERGY REGULATORY COMMISSION

Mr. Chairman and Members of the Committee; thank you for inviting me to appear before you this morning to discuss the need for Federal electricity restructuring legislation and the various bills currently pending before your Committee. Let me begin by commending you, Mr. Chairman, Senator Bingaman, and other Members of the Committee for advancing the important discussions on how best to achieve the restructuring that is needed in the U.S. electric industry in order to arrive at competitive and efficient wholesale and retail electricity markets. The bills that are before you are important and worthy of serious consideration by the Committee.

I believe that Federal electricity restructuring legislation is needed: (1) to address important and unresolved issues in electric industry, such as reliability, jurisdiction, and transmission access; and (2) to enable the Federal Energy Regulatory Commission to advance its goals of achieving fair, open, and competitive bulk power markets.

In order to achieve these overarching goals, Federal legislation must address several specific policy areas. I would like to comment briefly on six issues that I believe are the most important: (1) open transmission access; (2) regional transmission organizations; (3) Federal/State jurisdiction; (4) market power; (5) electric reliability; and (6) reform of certain existing laws.

In testimony presented before this Committee, Commission Chairman James J. Hoecker and Energy Secretary Bill Richardson have touched on these and other issues. I am in substantial agreement with their testimony on these issues. My testimony is intended primarily to supplement their comments and, in certain instances, to distinguish my views on these issues. I would also like to express my agreement with Chairman Hoecker and Secretary Richardson that the Administration's bill, S. 1047, appropriately addresses these policy issues and would produce significant benefits in wholesale electricity markets.

* * * * *

ELECTRICITY RELIABILITY

Many in the industry, including the North American Electric Reliability Council (NERC), recognize the lack of clear Federal authority for establishing or enforcing reliability standards for the electric industry and the importance that electric reliability be maintained as the industry is restructured. I believe that emerging competition in the electric industry necessitates a change in the manner in which the reliability of the interconnected electric system is overseen and managed. The present model of voluntary compliance by electric utilities of regulatory rules and criteria established by NERC and its member Regional Reliability Councils has worked effectively for over three decades. However, given the profound changes taking place in the industry, I believe this voluntary system should be replaced with one in which a self-regulated independent reliability organization, with oversight by the Commission, establishes and enforces mandatory reliability standards. A similar system would be created by S. 1047 (Administration), S. 1273 (Bingaman), S. 2098 (Murkowski), S. 516 (Thomas), and S. 2071 (Gorton).

I recognize and understand the concerns expressed by State commissions and the National Association of Regulatory Utility Commissioners (NARUC) regarding the need for an explicit State role in ensuring that reliable service to retail customers be preserved. My empathy on this matter comes from the years I spent as Commissioner and Chairman of the Kentucky Public Service Commission. I believe that States should have an appropriate role in preserving reliability. However, I also understand the need for unequivocal Federal authority to protect reliability across State borders. For this reason, I am unsure that a "state savings clause", as has been suggested by NARUC and included in S. 2098 (Murkowski) and S. 516 (Gorton), is the appropriate approach for Congress to take. I share Chairman Hoecker's concern that such a clause might not protect the national interest in preserving the reliability of the interstate transmission grid, which serves customers in multiple states. Given my understanding of the concerns on both sides of this issue, I am especially encouraged by the recent discussions between NARUC and

NERC, as alluded to in the testimony presented to this Committee by both of these groups. These discussions are intended to produce consensus language that clarifies the role of the States in ensuring reliable electric service to retail customers. It is my hope that these discussions are productive and that appropriate consensus language can soon be presented to the Committee.

* * * * *

ADDITIONAL VIEWS

While I strongly support the enactment of this legislation, there should be no misunderstanding that it does only part of the job of protecting consumers. It establishes enforceable rules for the use of the interstate transmission grid, but it does not stimulate the construction of new generation and transmission, which are essential if we are going to avoid electricity shortages this summer and in the future.

The best way to ensure that consumers have a reliable and reasonably-priced supply of electricity is through comprehensive legislation, such as the bill I introduced, S. 2098. Repeal of both the Public Utility Regulatory Policies Act of 1978 and the Public Utility Holding Company Act, as proposed in my bill, are essential if there is to be meaningful competition. In the absence of a comprehensive bill, I strongly support Senate action on the Banking Committee reported bill, S. 313, to repeal PUHCA.

FRANK H. MURKOWSKI.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 2071, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL POWER ACT

THE ACT OF JUNE 10, 1920, CHAPTER 285

PART 1

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PART 2

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Sec. 214. SALES BY EXEMPT WHOLESALE GENERATORS.

No rate or charge received by an exempt wholesale generator for the sale of electric energy shall be lawful under section 205 if, after notice and opportunity for hearing, the Commission finds that such rate or charge results from the receipt of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the exempt wholesale generator. For purposes of this section, the terms “associate company” and “affiliate” shall have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of 1935.

SEC. 215. ELECTRIC RELIABILITY ORGANIZATION.

(a) *DEFINITIONS.—In this section:*

(1) *AFFILIATED REGIONAL RELIABILITY ENTITY.—The term “affiliated regional reliability entity” means an entity delegated authority under subsection (h).*

(2) *BULK-POWER SYSTEM.—*

(A) *In general.—The term “bulk-power system” means all facilities and control systems necessary for operating an interconnected electric power transmission grid or any portion of an interconnected transmission grid.*

(B) *INCLUSIONS.—The term “bulk-power system” includes—*

(i) *high voltage transmission lines, substations, control centers, communications, data, and operations planning facilities necessary for the operation of all or any part of the interconnected transmission grid; and*

(ii) *the output of generating units necessary to maintain the reliability of the transmission grid.*

(3) *BULK-POWER SYSTEM USER.*—The term “bulk-power system user” means an entity that—

(A) sells, purchases, or transmits electric energy over a bulk-power system; or

(B) owns, operates, or maintains facilities or control systems that are part of a bulk-power system; or

(C) is a system operator.

(4) *ELECTRIC RELIABILITY ORGANIZATION.*—The term “electric reliability organization” means the organization designated by the Commission under subsection (d).

(5) *ENTITY RULE.*—The term “entity rule” means a rule adopted by an affiliated regional reliability entity for a specific region and designed to implement or enforce 1 or more organization standards.

(6) *INDEPENDENT DIRECTOR.*—The term “independent director” means a person that—

(A) is not an officer or employee of an entity that would reasonably be perceived as having a direct financial interest in the outcome of a decision by the board of directors of the electric reliability organization; and

(B) does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director of the electric reliability organization.

(7) *INDUSTRY SECTOR.*—The term “industry sector” means a group of bulk-power system users with substantially similar commercial interests, as determined by the board of directors of the electric reliability organization.

(8) *INTERCONNECTION.*—The term “interconnection” means a geographic area in which the operation of bulk-power system components is synchronized so that the failure of 1 or more of the components may adversely affect the ability of the operators of other components within the interconnection to maintain safe and reliable operation of the facilities within their control.

(9) *ORGANIZATION STANDARD.*—

(A) *IN GENERAL.*—The term “organization standard” means a policy or standard adopted by the electric reliability organization to provide for the reliable operation of a bulk-power system.

(B) *INCLUSIONS.*—The term “organization standard” includes—

(i) an entity rule approved by the electric reliability organization; and

(ii) a variance approved by the electric reliability organization.

(10) *PUBLIC INTEREST GROUP.*—

(A) *IN GENERAL.*—The term “public interest group” means a nonprofit private or public organization that has an interest in the activities of the electric reliability organization.

(B) *INCLUSIONS.*—The term “public interest group” includes—

(i) a ratepayer advocate;

(ii) an environmental group; and

(iii) a State or local government organization that regulates participants in, and promulgates government policy with respect to, the market for electric energy.

(11) **SYSTEM OPERATOR.**—

(A) **IN GENERAL.**—The term “system operator” means an entity that operates or is responsible for the operation of a bulk-power system.

(B) **INCLUSIONS.**—The term “system operator” includes—

- (i) a control area operator;
- (ii) an independent system operator;
- (iii) a transmission company;
- (iv) a transmission system operator; and
- (v) a regional security coordinator.

(12) **VARIANCE.**—The term “variance” means an exception from the requirements of an organization standard (including a proposal for an organization standard in a case in which there is no organization standard) that is adopted by an affiliated regional reliability entity and is applicable to all or a part of the region for which the affiliated regional reliability entity is responsible.

(b) **COMMISSION AUTHORITY.**—

(1) **JURISDICTION.**—Notwithstanding section 201(f), within the United States, the Commission shall have jurisdiction over the electric reliability organization, all affiliated regional reliability entities, all system operators, and all bulk-power system users, including entities described in section 201(f), for purposes of approving organization standards and enforcing compliance with this section.

(2) **DEFINITION OF TERMS.**—The Commission may by regulation define any term used in this section consistent with the definitions in subsection (a) and the purpose and intent of this Act.

(c) **EXISTING RELIABILITY STANDARDS.**—

(1) **SUBMISSION TO THE COMMISSION.**—Before designation of an electric reliability organization under subsection (d), any person, including the North American Electric Reliability Council and its member Regional Reliability Councils, may submit to the Commission any reliability standard, guidance, practice, or amendment to a reliability standard, guidance, or practice that the person proposes to be made mandatory and enforceable.

(2) **REVIEW BY THE COMMISSION.**—The Commission, after allowing interested persons an opportunity to submit comments, may approve a proposed mandatory standard, guidance, practice, or amendment submitted under paragraph (1) if the Commission finds that the standard, guidance, or practice is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(3) **EFFECT OF APPROVAL.**—A standard, guidance, or practice shall be mandatory and applicable according to its terms following approval by the Commission and shall remain in effect until it is—

- (A) withdrawn, disapproved, or superseded by an organization standard that is issued or approved by the electric

reliability organization and made effective by the Commission under section (e); or

(B) disapproved by the Commission if, on complaint or upon motion by the Commission and after notice and an opportunity for comment, the Commission finds the standard, guidance, or practice to be unjust, unreasonable, unduly discriminatory or preferential, or not in the public interest.

(4) *ENFORCEABILITY*.—A standard, guidance, or practice in effect under this subsection shall be enforceable by the Commission.

(d) *DESIGNATION OF ELECTRIC RELIABILITY ORGANIZATION*.—

(1) *REGULATIONS*.—

(A) *PROPOSED REGULATIONS*.—Not later than 90 days after the date of enactment of this section, the Commission shall propose regulations specifying procedures and requirements for an entity to apply for designation as the electric reliability organization.

(B) *NOTICE AND COMMENT*.—The Commission shall provide notice and opportunity for comment on the proposed regulations.

(C) *FINAL REGULATION*.—Not later than 180 days after the date of enactment of this section, the Commission shall promulgate final regulations under this subsection.

(2) *APPLICATION*.—

(A) *SUBMISSION*.—Following the promulgation of final regulations under paragraph (1), an entity may submit an application to the Commission for designation as the electric reliability organization.

(B) *CONTENTS*.—The applicant shall describe in the application—

- (i) the governance and procedures of the applicant; and
- (ii) the funding mechanism and initial funding requirements of the applicant.

(3) *NOTICE AND COMMENT*.—The Commission shall—

- (A) provide public notice of the application; and
- (B) afford interested parties an opportunity to comment.

(4) *DESIGNATION OF ELECTRIC RELIABILITY ORGANIZATION*.—The Commission shall designate the applicant as the electric reliability organization if the Commission determines that the applicant—

(A) has the ability to develop, implement, and enforce standards that provide for an adequate level of reliability of bulk-power systems;

(B) permits voluntary membership to any bulk-power system user or public interest group;

(C) ensures fair representation of its members in the selection of its directors and fair management of its affairs, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of organization standards and the exercise of oversight of bulk-power system reliability;

(D) ensures that no 2 industry sectors have the ability to control, and no 1 industry sector has the ability to veto, the applicant's discharge of its responsibilities as the electric reliability organization (including actions by committees recommending standards for approval by the board or other board actions to implement and enforce standards);

(E) provides for governance by a board wholly comprised of independent directors;

(F) provides a funding mechanism and requirements that—

(i) are just, reasonable, not unduly discriminatory or preferential and in the public interest; and

(ii) satisfy the requirements of subsection (I);

(G) has established procedures for development of organization standards that—

(i) provide reasonable notice and opportunity for public comment, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of organization standards;

(ii) ensure openness, a balancing of interests, and due process; and

(iii) includes alternative procedures to be followed in emergencies;

(H) has established fair and impartial procedures for implementation and enforcement of organization standards, either directly or through delegation to an affiliated regional reliability entity, including the imposition of penalties, limitations on activities, functions, or operations, or other appropriate sanctions;

(I) has established procedures for notice and opportunity for public observation of all meetings, except that the procedures for public observation may include alternative procedures for emergencies or for the discussion of information that the directors reasonably determine should take place in closed session, such as litigation, personnel actions, or commercially sensitive information;

(J) provides for the consideration of recommendations of States and State commissions; and

(K) addresses other matters that the Commission considers appropriate to ensure that the procedures, governance, and funding of the electric reliability organization are just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(5) EXCLUSIVE DESIGNATION.—

(A) IN GENERAL.—The Commission shall designate only 1 electric reliability organization.

(B) MULTIPLE APPLICATIONS.—If the Commission receives 2 or more timely applications that satisfy the requirements of this subsection, the Commission shall approve only the application that the Commission determines will best implement this section.

(e) ORGANIZATION STANDARDS.—

(1) SUBMISSION OF PROPOSALS TO COMMISSION.—

(A) *IN GENERAL.*—The electric reliability organization shall submit to the Commission proposals for any new or modified organization standards.

(B) *CONTENTS.*—A proposal submitted under subparagraph (A) shall include

- (i) a concise statement of the purpose of the proposal; and
- (ii) a record of any proceedings conducted with respect to the proposal.

(2) *REVIEW BY THE COMMISSION.*—

(A) *NOTICE AND COMMENTS.*—The Commission shall—

- (i) provide notice of a proposal under paragraph (1); and
- (ii) allow interested persons 30 days to submit comments on the proposal.

(B) *ACTION BY THE COMMISSION.*—

(i) *IN GENERAL.*—After taking into consideration any submitted comments, the Commission shall approve or disapprove a proposed organization standard not later than the end of the 60-day period beginning on the date of the deadline for the submission of comments, except that the Commission may extend the 60-day period for an additional 90 days for good cause.

(ii) *FAILURE TO ACT.*—If the Commission does not approve or disapprove a proposal within the period specified in clause (i), the proposed organization standard shall go into effect subject to its terms, without prejudice to the authority of the Commission to modify the organization standard in accordance with the standards and requirements of this section.

(C) *EFFECTIVE DATE.*—An organization standard approved by the Commission shall take effect not earlier than 30 days after the date of the Commission's order of approval.

(D) *STANDARDS FOR APPROVAL.*—

(i) *IN GENERAL.*—The Commission shall approve a proposed new or modified organization standard if the Commission determines the organization standard to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(ii) *CONSIDERATIONS.*—In the exercise of its review responsibilities under this subsection, the Commission—

(I) shall give due weight to the technical expertise of the electric reliability organization with respect to the content of a new or modified organization standard; but

(II) shall not defer to the electric reliability organization with respect to the effect of the organization standard on competition.

(E) *REMAND.*—A proposed organization standard that is disapproved in whole or in part by the Commission shall be remanded to the electric reliability organization for further consideration.

(3) *ORDERS TO DEVELOP OR MODIFY ORGANIZATION STANDARDS.*—The Commission, on complaint or on motion of the Commission, may order the electric reliability organization to develop and submit to the Commission, by a date specified in the order, an organization standard or modification to an existing organization standard to address a specific matter if the Commission considers a new or modified organization standard appropriate to carry out this section, and the electric reliability organization shall develop and submit the organization standard or modification to the Commission in accordance with the subsection.

(4) *VARIANCES AND ENTITY RULES.*—

(A) *PROPOSAL.*—An affiliated regional reliability entity may propose a variance or entity rule to the electric reliability organization.

(B) *EXPEDITED CONSIDERATION.*—If expedited consideration is necessary to provide for bulk-power system reliability, the affiliated regional reliability entity may—

(i) request that the electric reliability organization expedite consideration of the proposal; and

(ii) file a notice of the request with the Commission.

(C) *FAILURE TO ACT.*—

(i) *IN GENERAL.*—If the electric reliability organization fails to adopt the variance or entity rule, in whole or in part, the affiliated regional reliability entity may request that the Commission review the proposal.

(ii) *ACTION BY THE COMMISSION.*—If the Commission determines, after a review of the request, that the action of the electric reliability organization did not conform to the applicable standards and procedures approved by the Commission, or if the Commission determines that the variance or entity rule is just, reasonable, not unduly discriminatory or preferential, and in the public interest and that the electric reliability organization has unreasonably rejected or failed to act on the proposal, the Commission may—

(I) remand the proposal for further consideration by the electric reliability organization; or

(II) order the electric reliability organization or the affiliated regional reliability entity to develop a variance or entity rule consistent with that requested by the affiliated regional reliability entity.

(D) *PROCEDURE.*—A variance or entity rule proposed by an affiliated regional reliability entity shall be submitted to the electric reliability organization for review and submission to the Commission in accordance with the procedures specified in paragraph (2).

(5) *IMMEDIATE EFFECTIVENESS.*—

(A) *IN GENERAL.*—Notwithstanding any other provision of this subsection, a new or modified organization standard shall take effect immediately on submission to the Commission without notice or comment if the electric reliability organization—

(i) determines that an emergency exists requiring that the new or modified organization standard take effect immediately without notice or comment;

(ii) notifies the Commission as soon as practicable after making the determination;

(iii) submits the new or modified organization standard to the Commission not later than 5 days after making the determination; and

(iv) includes in the submission an explanation of the need for immediate effectiveness.

(B) NOTICE AND COMMENT.—The Commission shall—

(i) provide notice of the new or modified organization standard or amendment for comment; and

(ii) follow the procedures set out in paragraphs (2) and (3) for review of the new or modified organization standard.

(6) COMPLIANCE.—Each bulk power system user shall comply with an organization standard that takes effect under this section.

(f) COORDINATION WITH CANADA AND MEXICO.—

(1) RECOGNITION.—The electric reliability organization shall take all appropriate steps to gain recognition in Canada and Mexico.

(2) INTERNATIONAL AGREEMENTS.—

(A) IN GENERAL.—The President shall use best efforts to enter into international agreements with the appropriate governments of Canada and Mexico to provide for—

(i) effective compliance with organization standards; and

(ii) the effectiveness of the electric reliability organization in carrying out its mission and responsibilities.

(B) COMPLIANCE.—All actions taken by the electric reliability organization, an affiliated regional reliability entity, and the Commission shall be consistent with any international agreement under subparagraph (A).

(g) CHANGES IN PROCEDURE, GOVERNANCE, OR FUNDING.—

(1) SUBMISSION TO THE COMMISSION.—The electric reliability organization shall submit to the Commission—

(A) any proposed change in a procedure, governance, or funding provision; or

(B) any change in an affiliated regional reliability entity's procedure, governance, or funding provision relating to delegated functions.

(2) CONTENTS.—A submission under paragraph (1) shall include an explanation of the basis and purpose for the change.

(3) EFFECTIVENESS.—

(A) CHANGES IN PROCEDURE.—

(i) CHANGES CONSTITUTING A STATEMENT POLICY, PRACTICE, OR INTERPRETATION.—A proposed change in procedure shall take effect 90 days after submission to the Commission if the change constitutes a statement of policy, practice, or interpretation with respect to the meaning or enforcement of the procedure.

(ii) *OTHER CHANGES.*—A proposed change in procedure other than a change described in clause (i) shall take effect on a finding by the Commission, after notice and opportunity for comment, that the change—

(I) is just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

(II) satisfies the requirements of subsection (d)(4).

(B) *CHANGES IN GOVERNANCE OR FUNDING.*—A proposed change in governance or funding shall not take effect unless the Commission finds that the change—

(i) is just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

(ii) satisfies the requirements of subsection (d)(4).

(4) *ORDER TO AMEND.*—

(A) *IN GENERAL.*—The Commission, on complaint or on the motion of the Commission, may require the electric reliability organization to amend a procedural, governance, or funding provision if the Commission determines that the amendment is necessary to meet the requirements of this section.

(B) *FILING.*—The electric reliability organization shall submit the amendment in accordance with paragraph (1).

(h) *DELEGATIONS OF AUTHORITY.*—

(l) *IN GENERAL.*—

(A) *IMPLEMENTATION AND ENFORCEMENT OF COMPLIANCE.*—At the request of an entity, the electric reliability organization shall enter into an agreement with the entity for the delegation of authority to implement and enforce compliance with organization standards in a specified geographic area if the electric reliability organization finds that—

(i) the entity satisfies the requirements of subparagraphs (A), (B), (C), (D), (F), (J), and (K) of subsection (d)(4); and

(ii) the delegation would promote the effective and efficient implementation and administration of bulk-power system reliability.

(B) *OTHER AUTHORITY.*—The electric reliability organization may enter into an agreement to delegate to an entity any other authority, except that the electric reliability organization shall reserve the right to set and approve standards for bulk-power system reliability.

(2) *APPROVAL BY THE COMMISSION.*—

(A) *SUBMISSION TO THE COMMISSION.*—The electric reliability organization shall submit to the Commission—

(i) any agreement entered into under this subsection; and

(ii) any information the Commission requires with respect to the affiliated regional reliability entity to which authority is delegated.

(B) *STANDARDS FOR APPROVAL.*—The Commission shall approve the agreement, following public notice and an op-

portunity for comment, if the Commission finds that the agreement—

- (i) meets the requirements of paragraph (1); and
- (ii) is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(C) *REBUTTABLE PRESUMPTION.*—A proposed delegation agreement with an affiliated regional reliability entity organized on an interconnection-wide basis shall be rebuttably presumed by the Commission to promote the effective and efficient implementation and administration of the reliability of the bulk-power system.

(D) *INVALIDITY ABSENT APPROVAL.*—No delegation by the electric reliability organization shall be valid unless the delegation is approved by the Commission.

(3) *PROCEDURES FOR ENTITY RULES AND VARIANCES.*—

(A) *IN GENERAL.*—A delegation agreement under this subsection shall specify the procedures by which the affiliated regional reliability entity may propose entity rules or variances for review by the electric reliability organization.

(B) *INTERCONNECTION-WIDE ENTITY RULES AND VARIANCES.*—In the case of a proposal for an entity rule or variance that would apply on an interconnection-wide basis, the electric reliability organization shall approve the entity rule or variance unless the electric reliability organization makes a written finding that the entity rule or variance—

(i) was not developed in a fair and open process that provided an opportunity for all interested parties to participate;

(ii) would have a significant adverse impact on reliability or commerce in other interconnections;

(iii) fails to provide a level of reliability of the bulk-power system within the interconnection such that the entity rule or variance would be likely to cause a serious and substantial threat to public health, safety, welfare, or national security; or

(iv) would create a serious and substantial burden on competitive markets within the interconnection that is not necessary for reliability.

(C) *NONINTERCONNECTION-WIDE ENTITY RULES AND VARIANCES.*—In the case of a proposal for an entity rule or variance that would apply only to part of an interconnection, the electric reliability organization shall approve the entity rule or variance if the affiliated regional reliability entity demonstrates that the proposal—

(i) was developed in a fair and open process that provided an opportunity for all interested parties to participate;

(ii) would not have an adverse impact on commerce that is not necessary for reliability;

(iii) provides a level of bulk-power system reliability that is adequate to protect public health, safety, welfare, and national security and would not have a significant adverse impact on reliability; and

(iv) in the case of a variance, is based on a justifiable difference between regions or subregions within the affiliated regional reliability entity's geographic area.

(D) ACTION BY THE ELECTRIC RELIABILITY ORGANIZATION.—

(i) **IN GENERAL.**—The electric reliability organization shall approve or disapprove a proposal under subparagraph (A) within 120 days after the proposal is submitted.

(ii) **FAILURE TO ACT.**—If the electric reliability organization fails to act within the time specified in clause (i), the proposal shall be deemed to have been approved.

(iii) **SUBMISSION TO THE COMMISSION.**—After approving a proposal under subparagraph (A), the electric reliability organization shall submit the proposal to the Commission for approval under the procedures prescribed under subsection (e).

(E) DIRECT SUBMISSION.—An affiliated regional reliability entity may not submit a proposal for approval directly to the Commission except as provided in subsection (e)(4).

(4) FAILURE TO REACH DELEGATION AGREEMENT.—

(A) IN GENERAL.—If an affiliated regional reliability entity requests, consistent with paragraph (1), that the electric reliability organization delegate authority to it, but is unable within 180 days to reach agreement with the electric reliability organization with respect to the requested delegation, the entity may seek relief from the Commission.

(B) REVIEW BY THE COMMISSION.—The Commission shall order the electric reliability organization to enter into a delegation agreement under terms specified by the Commission if, after notice and opportunity for comment, the Commission determines that—

(i) a delegation to the affiliated regional reliability entity would—

(I) meet the requirements of paragraph (1); and

(II) would be just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

(ii) the electric reliability organization unreasonably withheld the delegation.

(5) ORDERS TO MODIFY DELEGATION AGREEMENTS.—

(A) IN GENERAL.—On complaint, or on motion of the Commission, after notice to the appropriate affiliated regional reliability entity, the Commission may order the electric reliability organization to propose a modification to a delegation agreement under this subsection if the Commission determines that—

(i) the affiliated regional reliability entity—

(I) no longer has the capacity to carry out effectively or efficiently the implementation or enforcement responsibilities under the delegation agreement;

(II) has failed to meet its obligations under the delegation agreement; or

(III) has violated this section;

(ii) the rules, practices, or procedures of the affiliated regional reliability entity no longer provide for fair and impartial discharge of the implementation or enforcement responsibilities under the delegation agreement;

(iii) the geographic boundary of a transmission entity approved by the Commission is not wholly within the boundary of an affiliated regional reliability entity, and the difference in boundaries is inconsistent with the effective and efficient implementation and administration of bulk-power system reliability; or

(iv) the agreement is inconsistent with a delegation ordered by the Commission under paragraph (4).

(B) *SUSPENSION.*—

(i) *IN GENERAL.*—Following an order to modify a delegation agreement under subparagraph (A), the Commission may suspend the delegation agreement if the electric reliability organization or the affiliated regional reliability entity does not propose an appropriate and timely modification.

(ii) *ASSUMPTION OF RESPONSIBILITIES.*—If a delegation agreement is suspended, the electric reliability organization shall assume the responsibilities delegated under the delegation agreement.

(i) *ORGANIZATION MEMBERSHIP.*—Each system operator shall be a member of—

(1) the electric reliability organization; and

(2) any affiliated regional reliability entity operating under an agreement effective under subsection (h) applicable to the region in which the system operator operates, or is responsible for the operation of, a transmission facility.

(j) *ENFORCEMENT.*—

(1) *DISCIPLINARY ACTIONS.*—

(A) *IN GENERAL.*—Consistent with procedures approved by the Commission under subsection (d)(4)(H), the electric reliability organization may impose a penalty, limitation on activities, functions, or operations, or other disciplinary action that the electric reliability organization finds appropriate against a bulk-power system user if the electric reliability organization, after notice and an opportunity for interested parties to be heard, issues a finding in writing that the bulk-power system user has violated an organization standard.

(B) *NOTIFICATION.*—The electric reliability organization shall immediately notify the Commission of any disciplinary action imposed with respect to an act or failure to act of a bulk-power system user that affected or threatened to affect bulk-power system facilities located in the United States.

(C) *RIGHT TO PETITION.*—A bulk-power system user that is the subject of disciplinary action under paragraph (1)

shall have the right to petition the Commission for a modification or rescission of the disciplinary action.

(D) *INJUNCTIONS.*—If the electric reliability organization finds it necessary to prevent a serious threat to reliability, the electric reliability organization may seek injunctive relief in the United States district court for the district in which the affected facilities are located.

(E) *EFFECTIVE DATE.*—

(i) *IN GENERAL.*—Unless the Commission, on motion of the Commission or on application by the bulk-power system user that is the subject of the disciplinary action, suspends the effectiveness of a disciplinary action, the disciplinary action shall take effect on the 30th day after the date on which—

(I) the electric reliability organization submits to the Commission—

(aa) a written finding that the bulk-power system user violated an organization standard; and

(bb) the record of proceedings before the electric reliability organization; and

(II) the Commission posts the written finding on the Internet.

(ii) *DURATION.*—A disciplinary action shall remain in effect or remain suspended unless the Commission, after notice and opportunity for hearing, affirms, sets aside, modifies, or reinstates the disciplinary action.

(iii) *EXPEDITED CONSIDERATION.*—The Commission shall conduct the hearing under procedures established to ensure expedited consideration of the action taken.

(2) *COMPLIANCE ORDERS.*—The Commission, on complaint by any person or on motion of the Commission, may order compliance with an organization standard and may impose a penalty, limitation on activities, functions, or operations, or take such other disciplinary action as the Commission finds appropriate, against a bulk-power system user with respect to actions affecting or threatening to affect bulk-power system facilities located in the United States if the Commission finds, after notice and opportunity for a hearing, that the bulk-power system user has violated or threatens to violate an organization standard.

(3) *OTHER ACTIONS.*—The Commission may take such action as is necessary against the electric reliability organization or an affiliated regional reliability entity to ensure compliance with an organization standard, or any Commission order affecting electric reliability organization or affiliated regional reliability entity.

(k) *RELIABILITY REPORTS.*—The electric reliability organization shall—

(1) conduct periodic assessments of the reliability and adequacy of the interconnected bulk-power system in North America; and

(2) report annually to the Secretary of Energy and the Commission its findings and recommendations for monitoring or improving system reliability and adequacy.

(1) *ASSESSMENT AND RECOVERY OF CERTAIN COSTS.*—

(1) *IN GENERAL.*—*The reasonable costs of the electric reliability organization, and the reasonable costs of each affiliated regional reliability entity that are related to implementation or enforcement of organization standards or other requirements contained in a delegation agreement approved under subsection (h), shall be assessed by the electric reliability organization and each affiliated regional reliability entity, respectively, taking into account the relationship of costs to each region and based on an allocation that reflects an equitable sharing of the costs among all electric energy consumers.*

(2) *RULES.*—*The Commission shall provide by rule for the review of costs and allocations under paragraph (1) in accordance with the standards in this subsection and subsection (d)(4)(F).*

(m) *APPLICATION OF ANTITRUST LAWS.*—

(1) *IN GENERAL.*—*Notwithstanding any other provision of law, the following activities are rebuttably presumed to be in compliance with the antitrust laws of the United States:*

(A) *Activities undertaken by the electric reliability organization under this section or affiliated regional reliability entity operating under a delegation agreement under subsection (h).*

(B) *Activities of a member of the electric reliability organization or affiliated regional reliability entity in pursuit of the objectives of the electric reliability organization or affiliated regional reliability entity under this section undertaken in good faith under the rules of the organization of the electric reliability organization or affiliated regional reliability entity.*

(2) *AVAILABILITY OF DEFENSES.*—*In a civil action brought by any person or entity against the electric reliability organization or an affiliated regional reliability entity alleging a violation of an antitrust law based on an activity under this Act, the defenses of primary jurisdiction and immunity from suit and other affirmative defenses shall be available to the extent applicable.*

(n) *REGIONAL ADVISORY ROLE.*—

(1) *ESTABLISHMENT OF REGIONAL ADVISORY BODY.*—*The Commission shall establish a regional advisory body on the petition of the Governors of at least two-thirds of the States within a region that have more than one-half of their electrical loads served within the region.*

(2) *MEMBERSHIP.*—*A regional advisory body—*

(A) *shall be composed of 1 member from each State in the region, appointed by the Governor of the State; and*

(B) *may include representatives of agencies, States, and Provinces outside the United States, on execution of an appropriate international agreement described in subsection (f).*

(3) *FUNCTIONS.*—*A regional advisory body may provide advice to the electric reliability organization, an affiliated regional reliability entity, or the Commission regarding—*

(A) *the governance of an affiliated regional reliability entity existing or proposed within a region;*

(B) *whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest; and*

(C) *whether fees proposed to be assessed within the region are—*

(i) *just, reasonable, not unduly discriminatory or preferential, and in the public interest; and*

(ii) *consistent with the requirements of subsection (l).*

(4) *DEFERENCE.—In a case in which a regional advisory body encompasses an entire interconnection, the Commission may give deference to advice provided by the regional advisory body under paragraph (3).*

(o) *APPLICABILITY OF SECTION.—This section does not apply outside the 48 contiguous States.*

(p) *REHEARINGS; COURT REVIEW OF ORDERS.—Section 313 applies to an order of the Commission issued under this section.*

(q) *PRESERVATION OF STATE AUTHORITY.—*

(1) *The Electric Reliability Organization shall have authority to develop, implement, and enforce compliance with standards for the reliable operation of only the Bulk Power System.*

(2) *This section does not provide the Electric Reliability Organization or the Commission with the authority to set and enforce compliance with standards for adequacy or safety of electric facilities or services.*

(3) *Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any Organization Standard.*

(4) *Not later than 90 days after the application of the Electric Reliability Organization or other affected party, the Commission shall issue a final order determining whether a state action is inconsistent with an Organization Standard, after notice and opportunity for comment, taking into consideration any recommendations of the Electric Reliability Organization.*

(5) *The Commission, after consultation with the Electric Reliability Organization, may stay the effectiveness of any state action, pending the Commission's issuance of a final order.*

* * * * *

SEC. 316(a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, or any rule or regulation imposed by the Secretary of the Army under authority of Part I of this Act shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding \$500 for each and every day during which such offense occurs.

(c) This **subsection** *section* shall not apply in the case of any provision of section 211, 212, 213, **[214]** *214 or 215*, or any rule or order issued under any such provision.

SEC. 316A. ENFORCEMENT OF CERTAIN PROVISIONS.

(a) VIOLATIONS.—It shall be unlawful for any person to violate any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision.

(b) CIVIL PENALTIES.—Any person who violates any provision of section 211, 212, 213, **[or 214]** *214, or 215* or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than \$10,000 for each day that such violation continues. Such penalty shall be assessed by the Commission, after notice and opportunity for public hearing, in accordance with the same provisions as are applicable under section 31(d) in the case of civil penalties assessed under section 31. In determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner.

